

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4167 of 1997

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE MR. K.SREEDHARAN and
MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MALVIKABEN BHIKHABHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR TUSHAR MEHTA for Petitioners
MR DA BAMBHANIA for Respondent No. 1
GOVERNMENT PLEADER for Respondent No. 2
SERVED BY DS for Respondent No. 3
MR AJ PATEL for Respondent No. 4

CORAM : THE CHIEF JUSTICE MR. K.SREEDHARAN and
MR.JUSTICE M.S.SHAH

Date of decision: 22/01/98

ORAL JUDGEMENT (Per K.Sreedharan CJ):

Petitioners - 71 in number - were appointed to the staff of the Sabarkantha District Central Cooperative Bank Ltd., Himatnagar (hereinafter referred to as the Bank) in December 1996. The Registrar Cooperative

Societies, Gujarat State, Gandhinagar (hereinafter referred to as the Registrar), by order dated 18/19th September 1997 (Annexure F) issued directions to the Bank to cancel the appointment of 72 candidates, invoking the powers under Section 160 of the Gujarat Cooperative Societies Act, 1961 (hereinafter referred to as the Act) Legality of that order passed by the Registrar is in issue in this petition.

2. Fourth respondent Bank was declared weak bank in 1990. That was on account of its inability to recover the amount advanced to Sabarkantha Spinning Cooperative Mills. For more than ten years no vacancy in the staff of the Bank was filled up. Therefore, by letter dated 15-4-1993 the Bank sought sanction of Registrar for recruitment of 72 clerks and typists. The sanction was sought for because advance transactions of the bank increased many fold and it was not possible to manage its affairs with the existing staff. Registrar by letter dated 26/27-6-1995 (Annex.III) accorded sanction for filling up 25 posts of clerks. While giving that sanction, Registrar insisted the candidate to be having Ist Class B.Com. Degree and that standard of reservation prescribed by the Government should be maintained. On receipt of that letter the Society took up the matter with the Registrar for relaxing the educational qualifications of the candidates as per its letter dated 14-7-1995. Thereupon the Registrar by his communication dated 4-3-1996 allowed the bank to fill up 25 posts of clerks in accordance with the recruitment rules of the Bank, after calling for the names from the Employment Exchange and publishing an advertisement. Since the Bank wanted more clerks in its staff, it took up the matter with the Registrar as seen in its communication dated 28-10-1996 (Annexure VI). After realising the financial position of the Bank the Registrar, by communication dated 11-12-1996 permitted the bank to recruit 47 clerks more, over and above 25 clerks already sanctioned. While granting sanction Registrar again reiterated the educational qualification of 50% marks in B.A., B.Sc.,B.Com. degree examination and compliance of the standard of reservation as prescribed by the Government for recruitment.

3. Coming to know about the steps taken by the Bank, in filling up the vacancies, Loka Adhikar Sangh and Ramjibhai Nathubhai Patel approached this Court praying for quashing the advertisement given in the newspaper and to direct the bank to make recruitment to the posts of Clerks and Typists after following due process as required under the Service Regulations. Sabarkantha

District Central Cooperative Bank Ltd., Himatnagar, its Chairman and the District Registrar (Cooperative) were the three respondents in that Special Civil Application. A Division Bench of this Court disposed of that petition by judgment dated 10-10-1996 and directed the Bank to follow the service regulations in the matter of appointment to its staff.

4. Clause 31(5) of the Bye-Laws of the Sabarkantha District Central Cooperative Bank Ltd., enables the Bank to frame service rules subject to the approval of the Registrar of the Cooperative Societies. Pursuant to this provision contained in the byelaws, the Bank framed the Sabarkantha District Central Cooperative Bank Ltd., Employees' Service Regulations. Those Service Regulations were approved by the Registrar. Clause 9(5) of the said Service Regulations is in the following terms:

9(5). The minimum qualification required for recruitment in the service of the Bank, except recruitment in the subordinate grade, shall ordinarily be the passing of the S.S.C. Examination, or an equivalent examination, except in cases of persons with previous experience and/or fairly good knowledge of accounts, banking and/or cooperation if the Board deem fit to waive the requirement of minimum qualification. For the post of a Typist-Clerk, a certificate of having passed a recognized examination in typing will be required, and the candidate for employment may be subjected to a speed-test if necessary."

5. Section 76 of the Gujarat Cooperative Societies Act 1961, relates to appointment of the officers and employees of the Societies and other conditions of service. It states that the qualifications for appointment of an employee of a society and the conditions of service shall be such as may be prescribed from time to time. Term "prescribed" has been defined in Section 2(15) of the Act as prescribed by rules. So the Act contemplated rules laying down the terms and conditions of service of employees in Cooperative societies. Section 168 of the Act authorises the Government, by notification in the official gazette, to make rules on matters required by the Act to be prescribed. A cumulative effect of these statutory provisions enables the Government to prescribe

qualifications and conditions of service of the members of staff of the Cooperative Societies. State of Gujarat has not so far framed any rules relating to the qualifications and conditions of service in Cooperative Societies or the Cooperative Banks. In absence of such rules, service regulations framed by the various Cooperative Societies control qualifications and conditions of service of their employees. As per the service regulations applicable to 4th respondent Bank, Regulation 9(5) quoted above has to be followed. This was the direction given by the Division Bench in Special Civil Application No.3897 of 1996.

6. The directions given by the Registrar in his letter dated 26/27-6-1995 to select first Class Graduates to the post of Clerks was against service regulations framed by the Bank. On coming to know about this fact, Registrar by his letter dated 4-3-1996 allowed the Bank to fill up the vacancies in accordance with the recruitment rules. It means that he gave a go-by to earlier direction that a candidate should have a first class degree for getting selected to the post. When sanction to recruit 47 clerks was given by his communication dated 11--12-1996 (Annex.VII), the Registrar again tried to impose a condition that the candidate should have 50% or more marks in the degree examination. That direction given by the Registrar cannot be sustained especially in view of his letter dated 4-3-1996 and the decision of this Court in Special Civil Application No. 3897 of 1996.

7. Petitioners' appointment to the staff of 4th respondent is sought to be cancelled by order dated 18/19-9-1997 (Annexure F) on two grounds. First ground is that the appointment was made in violation of the directions given by the Registrar while granting sanction namely, that the persons who are not having more than 50% marks in degree examination are selected. Second ground is that the principles of reservation have not been followed for effecting the appointment.

8. The first ground, noncompliance with the directions in selecting persons having less than 50% marks in degree examination, cannot be sustained for the reasons stated hereinabove in the earlier paragraphs. Neither the byelaws nor the service regulations framed by 4th respondent provide for reservation for Scheduled Caste and Scheduled tribe candidates. No provision is enacted in the Cooperative Societies Act enjoining the Cooperative Societies to follow reservation principles while making appointment to its staff. Government of

Gujarat has not framed any regulations invoking the provisions contained in Section 168 of the Cooperative Societies Act. In the absence of such statutory provisions the Registrar was not entitled to give any direction to the Society to comply with the "standard of reservation as prescribed by the Government". If the Government has prescribed any standard for reservation that can be traced to the provisions contained in Article 335 of the Constitution; but it relates to only appointments to services and posts in connection with the affairs of the State. Appointment to the staff of the Cooperative Society is not in connection with the affairs of the State. Therefore, the said direction given by the Registrar cannot also be sustained.

9. From the impugned order it would appear that the Registrar had taken the view that there was not wide publicity for the vacancies in Gujarati newspapers and that the selection was not shown to have been done properly. Fourth respondent advertised the vacancies in one issue of Jansatta dated 19-5-1996. Registrar in his affidavit has taken the view that the said newspaper Jansatta does not have wide circulation in Gujarat. This contention has been countered by learned Counsel representing the petitioners and the Bank. We are inclined to accept the contention raised by the petitioners and the bank especially in view of the fact that pursuant to the advertisement in one issue of that paper more than thousand persons applied for the post. On going through the record made available to us by the Bank, it is beyond dispute that the candidates were properly interviewed and select list was prepared on the basis of the proved merit of the candidates, Annexure IV Office Note of 4th respondent dated 9-9-1996 shows that five senior officers of the Bank were entrusted with the responsibility of interviewing the candidates for preparing the select list. They were directed to give marks taking into consideration educational qualifications, writings, drafting of the application, etc. straightforwardness, correct replies, personality, conduct and smartness, etc. of the candidates. Not even a vague averment is made on behalf of the Registrar that those officers acted under the influence of any other person and prepared a select list taking into consideration irrelevant aspects.

10. In view of what is stated above, we are clear in our mind that the Registrar was in error in issuing the impugned order. On the facts and circumstances of this case, action of the Registrar was arbitrary and not supported by any reason. The order dated 18/19 -9-1997

(Annexure F) passed by Registrar is therefore, quashed.

11. This Special Civil Application is allowed in the above terms. However, we make no order as to costs.

Sd/-

(K.Sreedharan CJ)

Sd/-

(M.S.Shah J.)